IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 3548 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ASPAK ISMAIL DAMANIA

Versus

STATE OF GUJARAT

Appearance:

MR KJ SHETHNA for Petitioner

PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 25/08/2000

ORAL JUDGEMENT

#. Rule. Learned APP Ms.Katha Gajjar waives service on behalf of the respondent. By consent of the learned advocates and looking to the facts and circumstances of

the case, the application is taken up for hearing today.

#. By means of filing this application, the petitioner has prayed that the conditions nos. (d), (e) and (g) laid-down by this court while granting bail to the petitioner in Misc.Criminal Application No.2582 of 1998 by order dated July 14, 1998 be deleted. The petitioner alongwith other accused persons has been chargesheeted for the offence punishable under sections 302, 149 by Billimora Police Station in pursuance of C.R.No.I-28/97. The petitioner had moved the application for bail being Misc.Criminal Application No.2582 of 1998 and the court (Coram: M.H.Kadri,J.) had passed following order on July 14, 1998,

"Rule. Mrs.Ami Yagnik, learned A.P.P., waives service of notice of rule on behalf of the respondent. Having regard to the facts of the case, the application is heard today.

I have gone through the chargesheet and the police papers. Looking to the facts and circumstances of the case and the manner in which the incident had taken place, the petitioner ASPAK ISMAIL DAMANIA, is ordered to be released on bail in connection with C.R. No.I-28 of 1997, registered at Billimora Police Station, on executing a bond of Rs.25,000/- (Rupees twenty five thousand only) with one surety of the like amount to the satisfaction of the lower court, and subject to the conditions that he shall

(a) not take undue advantage of his liberty or abuse his liberty;

(b) not act in a manner injurious to the interest of the prosecution;

(c) maintain law and order;

(d) not enter into the limits of Districts of Surat, Navsari, Valsad and Bharuch, during pendency of the trial, without prior permission of the Court, but for attending the court in connection with this case he will be free to enter the limits for a period to the extent necessary and will leave the limits soon after the case is adjourned.

(e) shall reside in Ahmedabad during the period of bail.

(f) furnish the address of his residence to the Court as well as to the Investigating Officer at the time of execution of the bond and shall not change the residence without prior permission of the Court;

(g) mark his presence at Karanj Police Station, Ahmedabad, on every Monday between 2 p.m. and 5 p.m., until commencement of the trial;

(g) surrender his passport, if any, to the lower court within a week.

If breach of any of the above conditions is committed, the Sessions Judge, Navsari, will be free to issue warrant or take appropriate action in the matter.

Bail before the lower court having jurisdiction to try the case.

Rule is made absolute. Direct service is permitted."

#. Learned counsel for the petitioner has submitted that, more than two years have been passed since the imposing of the conditions in the order dated July 14, 1998 and no untoward incident had taken place and the petitioner has abided by the conditions laid down in the above order. It is submitted by the learned counsel for the petitioner that the petitioner has lost his source of livelihood since last two years, and therefore, conditions imposed in the order passed in Misc.Criminal Application No.2582 of 1998 be modified suitably.

#. Learned APP Ms.Katha Gajjar has vehemently opposed this application and has submitted that the incident in question has taken place in the town - Billimora, and therefore, the petitioner should not be permitted to enter the limits of Taluka Gandevi, wherein town Billimora is situated.

#. Having heard the learned counsel for the parties, I am of the opinion that, since the petitioner has suffered financial loss as he could not attend his business and earn his livelihood and as he has not committed any

breach of the conditions laid down in the order dated July 14, 1998 in Misc.Criminal Application No.2582 of 1998, the condition nos.(d), (e) and (g) deserve to be modified.

#. As a result of the foregoing discussions, following order is passed.

#. The condition nos. (a), (b) and (c) are hereby not disturbed. However, the condition no.(d) is modified and the petitioner is directed not to enter the limits of Taluka Gandevi, District Navsari during the pendency of Sessions Case No.76 of 1997 of the Sessions Court at Navsari without prior permission of the Sessions Court at Navsari during the period of his release on bail and during the period of bail, he shall reside at the town - Chikhli at his sister's place which is as under.:

Razia w/o Faruk Ibrahim Qureshi
Bazar Khatriwad,
Chikhli,
District Valsad.

The petitioner shall report on every Monday at the Chikhli Taluka Police Station between 2.00 p.m. to 5.00 p.m. till the conclusion of the trial. The conditions Nos. (e), (f) and (g) are deleted. The petitioner shall surrender his passport, if any, to the Sessions Court at Navsari within a period of 10 days from today. If, breach of any of the conditions is committed, Sessions Judge, Navsari will be free to issue warrant or take appropriate action in the matter. Bail granted earlier to the petitioner shall continue. Rule is made absolute to the above extent. Direct service is permitted.

(M.H.Kadri,J.)
(pathan)